

## Message Text

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ACTION AF-18

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FM AMEMBASSY PRETORIA

TO SECSTATE WASHDC 9512

INFO USUN NEW YORK 893

AMCONSUL CAPE TOWN

AMCONSUL DURBAN

AMCONSUL JOHANNESBURG

UNCLAS PRETORIA 1218

E.O. 11652

TAGS: PINS WA

SUBJECT: INITIAL COURT DECISION ON FLOGGINGS IN NAMIBIA

REF: PRETORIA 1035 AND PREVIOUS

1. IN 1973, MANY OPPONENTS OF SAG-SUPPORTING OWAMBO GOVERNMENT WERE DETAINED AND SOME LATER WERE BRUTALLY FLOGGED. SUBSEQUENTLY, AFTER AN APPLICATION SUBMITTED TO SOUTH WEST AFRICA SUPREME COURT BY LUTHERAN BISHOP LEONARD AUALA AND ANGLICAN BISHOP-SUFFRAGAN RICHARD WOOD, AND INTERDICTION WAS MADE AGAINST ANY FURTHER FLOGGINGS UNTIL COURT REVIEWED THE BISHOPS' APPLICATION.

2. IN DECISION DELIVERED MARCH 22, JUDGE PRESIDENT OF SWA, JUSTICE F. H. BADENHORST, REFUSED TO RESTRAIN TRIBAL AUTHORITIES IN OWAMBO FROM FLOGGING MEMBERS OF SWAPO AND DEMOCRATIC COOPERATIVE DEVELOPMENT PARTY (DEMKOP). BADENHORTS DID NOT PASS JUDGEMENT ON APPLICATION BY BISHOP AUALA AND BISHOP WOOD THAT FLOGGINGS HAD EXCEEDED IN BRUTALITY AND OTHER WAYS THE CUSTOMARY PRACTICES RE ADMINISTRATION OF FLOGGINGS BY TRIBAL AUTHORITIES. HIS  
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DECISION BASED SOLELY ON HIS FINDING THAT NEITHER AUALA

NOR WOOD HAD LOCUS STANDI IN THE CASE.

3. BADENHORTS'S DECISION DOES NOT END MATTER. ON APRIL 5 SWA SUPREME COURT WILL HEAR THREE MORE CASES ARISING OUT OF FLOGGING OF SWAPO AND DEMKOP MEMBERS. MOREOVER, BADENHORTS RULED THAT ANYONE SENTENCED TO FLOGGING HAD RIGHT TO APPEAL TO HIGHER AUTHORITIES. HE SAID FLOGGINGS WOULD AUTOMATICALLY BE SUSPENDED PENDING OUTCOME OF ANY SUCH APPEAL. HE ALSO SAID THAT PERSONS WHO FELT THEMSELVES TO BE THREATENED WITH FLOGGING WERE FREE TO SEEK RELIEF FROM THE COURTS. THIS WOULD ALSO APPLY TO ORGANIZATIONS, SUCH AS SWAPO AND DEMKOP. HURD

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